THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13515 OF 2006

ORDER:

The petitioners, eleven in number, were granted licenses in respect of retail shops at Adoni for the year 2005-06. Subsequently, for the lease period 2006-08, the 2nd respondent-District Collector, Kurnool, issued tender notice under the provisions of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short "the Rules"), inviting tenders for grant of lease, fixing the date of auction as 3.6.2006. In response to the said notice, 13 tenders were received including the tenders of the petitioners 1 to 6, 10, and 11 herein, who were the existing licensees for the year 2005-06, along with petitioners 7, 8 & 9, for 11 shops of Adoni Municipality. After opening the tenders on 3.6.2006, the auctioning authority, having found that single tender was received in respect of shops 1 to 7, 9 and 11, and two tenders each were received in respect of shop Nos.8 and 10 with a minimum increase over the notified upset price, rejected the tenders, in exercise of the powers under Section 14(7) of the Rules, the shops were re-notified and a second notification was issued on 5.6.2006. In response to the same, the petitioners 1 to 6, 10 & 11, along with three other members of their group i.e., petitioners 7, 8 and 9, submitted their tenders. The said tenders were opened on 30.6.2006. However, it was found that in respect of all the 11 shops notified, single tender was received with a minimum increase over the notified upset price. In the circumstances, the tenders were rejected. Again the shops were notified on 1.7.2006, inviting sealed tenders for disposal of the above said 11 shops of Adoni Municipality, fixing the date of auction as 8.7.2006. At that stage, the present writ petition has been filed seeking a declaration that the action of the 2nd respondent in rejecting the highest bid of the petitioners in respect of shop Nos.1 to 1 and the consequent re-

notification dated 1.7.2006, is arbitrary and illegal and, consequently, to direct the 2nd respondent to accept the bids of the petitioners.

I have heard the learned counsel for the petitioners and the learned Government Pleader appearing for the respondents.

The learned counsel for the petitioners contended that since, admittedly, the bids made by the petitioners were higher than the upset price, there is absolute no justifiable reason for the respondents to reject the tenders. It is also contended that the rejection of tenders is permissible under the Statutory Rules only on the ground that the tender is of benami in nature, or that there is collusion among the tenderers, who participated in the auction for the lease of any shop.

It is contended that in the case on hand, there is absolutely no material to hold that there is any collusion among the tenderers, who have participated in the auction. Moreover, neither there was any complaint from anybody, nor there was any other material to substantiate such an allegation. It is also contended that the mere fact that some of the tenderers were the existing licensees and that single tender was received, cannot be a ground to presume that there was collusion among the participants.

The learned counsel further contended that as a matter of fact, in the case of Municipal Corporation of Kurnool, bids with a marginal increase were accepted, but so far as the petitioners are concerned, the respondents are adopting a different yardstick, which is arbitrary and discriminatory.

On the other hand, the learned Government Pleader for Prohibition & Excise contended that the 2nd respondent having been satisfied that a cartel was formed by the existing licensees of Adoni Municipality, has rightly cancelled the tenders, in exercise of the powers conferred under rule 14(7) of the Rules, and that the said action cannot be found fault with.

Sub-rule (7) of Rule 14, may be extracted hereunder:

> "14(7). The auctioning authority, may by order reject any tender on the ground that the tender is of *benami* in nature

or that there is collusion among the tenderers who participated in the auction for the lease of any shop."

In the light of the above provision, there can be no dispute about the competence of the 2nd respondent to cancel or reject the tenders on being satisfied that there is collusion among the tenderers who participated in the auction. However, it is necessary for the 2nd respondent to record reasons where highest tender was not accepted. It is not in dispute that except for three shops, in respect of other shops in Adoni Municipality, single tender was received, and similar situation repeated in the successive notifications. In the circumstances, it cannot be said that the conclusion of the 2nd respondent that a cartel was formed among the participants, is without any basis.

In the counter-affidavit, it was explained that in respect of Kurnool Municipal Corporation during the year 2005-06, there was an increase of (6.75%) over the upset price, but in respect of Adoni Municipality, there was an increase of only 0.02% over the notified upset price. The highest tenders in respect of shops of Kurnool Municipal Corporation were accepted wherever the tender amount offered was more than the notified upset price, as there was no cartel formation and no collusion was noticed. However, in case of Adoni, on both the occasions tenders were offered with a nominal increase having been managed by the petitioners along with their group by forming a cartel and by preventing others in filing tenders. Hence, keeping in view the public revenue and public interest, the tenders were rejected. In respect of Gulyam and Yemmiganur shops, the tendered amount was less than the upset price, as such opportunity was given for negotiation to offer higher amount than the upset price under second proviso to Rule 14(6) and, accordingly, Gulyam shop was finalized for a negotiated amount of Rs.17,72,000/- as against the upset price of Rs.17,60,010/-, as the tendered amount was Rs.17,60,064/-. But in the case of Yemmiganur, the tenderers did not come forward to avail the opportunity for negotiations and in respect of Kurnool, the tendered amount was

higher than the upset price. As such, the contention of the petitioners is not tenable.

Having regard to the facts and circumstances explained in the counter-affidavit, I am unable to hold that the action of the respondents in rejecting the tenders, so far as Adoni Municipality is concerned, is discriminatory. In the absence of a plea much less any material attributing *mala fides* against the respondents, the impugned action of the respondents cannot be held to be either arbitrary, or illegal. Moreover, the impugned action was in terms of Rule 14(7) of the Rules, and cannot be held to be in violation of any statutory provision. Hence, the interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India is not warranted.

The writ petition is devoid of any merit, and the same is accordingly, dismissed. No costs.

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(G. ROHINI, J.

31st July, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.13515 OF 2006

31st July, 2006.

Between:

P. Prabhakar Reddy and others. .. Petitioners.

And

The Commissioner of Prohibition & Excise,
Government of Andhra Pradesh, Hyderabad and
others. .. Respondents.